

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA**

**-v-**

**10-CR-228 (LTS)**

**DANIEL BONVENTRE,  
ANNETTE BONGIORNO,  
JOANN CRUPI, a/k/a "Jodi,"  
JEROME O'HARA, and  
GEORGE PEREZ,**

**Defendants.**

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**DEFENDANTS' JOINT REQUESTS TO CHARGE AS TO COUNTS 9-14**

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REQUEST NO. 17

Counts Nine, Ten, and Eleven: Falsifying Records of a Broker  
Dealer

Elements of the Offense

For each of Counts Nine, Ten and Eleven, to establish a violation of 17 C.F.R. 240.17a-3, and thus, a violation of Title 15, United States Code, Sections 78q(a) and 78ff, the Government must prove each of the following elements against each individual defendant beyond a reasonable doubt:

First, that Madoff Securities was a registered broker-dealer governed by the Securities Exchange Act of 1934;

Second, that Madoff Securities was required by the rules and regulations adopted by the SEC to make and keep the records charged in each Count, as set forth below;

Third, that the individual defendant you are considering knowingly and willfully made, or caused to be made, a materially false or misleading statement in those records;

Fourth, that the allegedly false statement was within the statute of limitations, as I will explain further.

Now I will explain these four elements in more detail.

REQUEST NO. 18

Counts Nine, Ten, and Eleven: Falsifying Records of a Broker or Dealer

First Element - that BLMIS was a registered broker or dealer

The Government must prove that BLMIS was a registered broker or dealer under the Securities Exchange Act of 1934. A "broker" is "any person engaged in the business of effecting transactions in securities for the accounts of others." A "dealer" is "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise." The definition of a dealer does not include a "trader", that is a person who buys and sells securities for his/her own account but not as part of a regular business.

To be registered as a broker or dealer means to register with the SEC under Section 15(b) of the Securities Exchange Act of 1934. If you are not unanimous in your determination that the Government has proven beyond a reasonable doubt that BLMIS was a registered broker or dealer under the Securities Exchange Act of 1934, the Government has not carried its burden, then you need not go any further and you must acquit each of the defendants of the charges in Counts 9, 10 and 11.

See Securities Exchange Act of 1934 § 3(a)(4)(A); 15(b).

REQUEST NO. 18A

Second Element -- Documents Required To Be Kept and Maintained  
by a Registered Broker or Dealer

With respect to each of Counts Nine, Ten and Eleven, respectively, the Government must show, first, that BLMIS was required by the rules and regulations of the Securities Exchange Act of 1934 to make and keep certain records concerning their business as a broker or dealer. I have already instructed you that registered broker-dealers are required to make and keep certain records as prescribed by rules of the SEC. These records include trade confirmations, trade blotters, and general ledgers of the business of the broker-dealer setting forth all assets and liabilities, income, expenses and capital accounts of the broker-dealer. (Title 17, Code of Federal Regulations, Section 240.17a-3).

The Government alleges that the following documents were falsified or caused to be falsified by the defendants [we respectfully ask the government to identify which documents were allegedly falsified with respect to each defendant and each count, in violation of the law]. As I explained previously, if you find that BLMIS was a registered broker-dealer, then it was required to make and keep these records.

Counts Nine, Ten, and Eleven: Falsifying Records of a Broker  
Dealer

Third Element -- Falsity

The Government next must prove, with respect to each of Counts Nine, Ten and Eleven, that the individual defendant you are considering knowingly and willfully made, or caused to be made, materially false and misleading statements in the records you are considering.

A statement or representation is "false" if it was untrue when made, and known at the time to be untrue by the person making it or causing it to be made. As I have explained previously, a statement is misleading if it is either an untrue statement as to a material fact or if it omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

I have defined the term "material" for you previously and you should use that definition here. To summarize, a statement is material if it has a "natural tendency to influence, or [is] capable of affecting or influencing," the person to whom the statement was made.

I have also defined the terms and "knowingly" and "willfully". Those same definitions and requirements apply here. To summarize, to act "knowingly" in this context means that the Government has the burden of proving beyond a reasonable doubt that the individual defendant you are considering knew what he or she was doing and was aware of the nature of his or her conduct. To make a false statement "willfully", means that the individual defendant you are considering must have had the specific intent to make a false statement, or cause a false statement to be made. Specific intent does not require evil intent, but only that the defendant act deliberately and with knowledge of the falsity

Also, as I defined for you previously, an individual defendant's good faith is a complete and absolute defense to the charges in this case, including these counts. A defendant acting in good faith cannot be found to have been acting knowingly, willfully, and thus cannot have acted with a specific intent to commit the crime charged.

To establish this element, the Government need not prove that the defendant in question physically made or otherwise personally prepared the statements in question. It is sufficient if the Government has proved the individual defendant in question knowingly and willfully caused materially false information to be included in a required record by some person.

Now, in each of Counts Nine, Ten and Eleven, the Government has alleged different documents were false or fraudulent. The Government contends that each of these documents contains a number of materially false statements and misleading omissions. The Government is not required to prove that all of these statements and omissions were, in fact false. However, in order to convict the individual defendant you are considering, each juror must agree with all of the other jurors that the same statement in the same document that you are considering was in fact materially false or misleading, and that the document also satisfies the other elements of this charge. You may not convict the individual defendant you are considering unless you find unanimously that the government has proven beyond a reasonable doubt that at least one particular statement was materially false and misleading, and satisfies the other elements of this charge. If you unanimously agree that the Government has met its burden of proof as to any of the defendants, the verdict form you will receive will ask you to identify what document or documents you have unanimously agreed satisfied the elements of these counts, as to each individual defendant.

Now, unless the Government has proven to you beyond a reasonable doubt the same materially false and misleading statement in a particular document required to be kept by a broker or dealer, and that the particular defendant knowingly and willfully caused that false statement to be made, you must acquit the defendant of the charge in these count based upon that particular document.

REQUEST NO. 19A

Counts Nine, Ten, and Eleven: Falsifying Records of a Broker  
Dealer

Fourth Element - Statute of Limitations

The final element is that there is a limit on how much time the government has to obtain an indictment. This is called the statute of limitations. The statute of limitations for the offenses charged in Counts Nine, Ten and Eleven is five years. This means that for you to return a guilty verdict on any of Counts Nine, Ten or Eleven, the Government must convince you beyond a reasonable doubt that the particular false statement unanimously agreed upon was made on or after November 17, 2005.

REQUEST NO. 20

Counts Twelve, Thirteen, and Fourteen: Falsifying Records of an  
Investment Adviser

Counts Twelve, Thirteen, and Fourteen charge the defendants with falsifying, or causing the falsification of, the books and records of an investment adviser, here, BLMIS.

[The Court is respectfully requested to read Counts Twelve, Thirteen and Fourteen of the Indictment and to specify which defendants are charged in each.]

Federal law mandates that companies which are registered or required to be registered as investment advisors, who make use of the mails or any instrumentalities of interstate commerce in connection with their business, are required to make and keep records as prescribed by SEC rules. These records include memoranda of each order given by the investment adviser for the purchase or sale of any security, and trial balances, financial statements and internal audit working papers relating to the business of the investment adviser. (Title 17, Code of Federal Regulations, Section 275.204-2). Investment advisors are required to "make and keep for prescribed periods such records . . . furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors" (Title 15, United States Code, Section 80b-4). These counts also charge violations of Title 15, United States Code, Section 80b-17. Section 80b-17 provides in relevant part:

Any person who willfully violates any provision of this subchapter, or any rule, regulation, or order promulgated by the Commission under authority thereof, shall [shall be guilty of a crime].

This section makes it unlawful to willfully violate the provisions of law which require investment advisers to maintain records required by the SEC.



REQUEST NO. 21

Counts Twelve, Thirteen, and Fourteen: Falsifying Records of an  
Investment Adviser

Elements

For each of Counts Twelve, Thirteen, and Fourteen, to establish a violation of Title 15, United States Code, Sections 80b-4 and 80b-17, the Government must prove each of the following five elements beyond a reasonable doubt:

First, that BLMIS was a registered or unregistered investment advisor at the relevant time;

Second, that BLMIS made use of the mails or any instrumentalities of interstate commerce in connection with its investment advisory business;

Third, that BLMIS was required by law to make and keep the records charged in that Count, as set forth below;

Fourth, that the individual defendant you are considering knowingly and willfully caused BLMIS to make false and misleading statements within those records required by law; and

Fifth, that such false or misleading statements occurred within the statute of limitations, as I will explain further to you.

Now I will explain these five elements in more detail.

REQUEST NO. 22

Counts Twelve, Thirteen, and Fourteen: Falsifying Records of an  
Investment Adviser

First Element -

With respect to each of Counts Twelve, Thirteen, and Fourteen, respectively, the Government must show, first, that at the relevant time BLMIS was an Investment Adviser that was registered or required to be registered under section 203 of the Investment Advisers Act. An Investment Adviser means "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities," with certain exceptions not applicable here. An Investment Adviser must register with the SEC unless it qualifies for an exception from the Act's registration requirements, which exceptions do not apply here.

In this regard I further instruct you that BLMIS registered as an Investment Advisor as of August 25, 2006.

REQUEST NO. 22A

Counts Twelve, Thirteen, and Fourteen: Falsifying Records of an  
Investment Adviser

Second Element - Use of the mails or any instrumentalities of interstate commerce in connection with its investment advisory business.

The Government next must prove, with respect to each of Counts Twelve, Thirteen, and Fourteen, that BLMIS made use of the mails or any instrumentalities of interstate commerce in connection with its investment advisory business. The use of the mails or any instrumentalities of interstate commerce can be from one state to another, or just within a state or even a single city; it does not matter, as long as the United States mails or any instrumentalities of interstate commerce were used. "Instrumentalities of interstate commerce" include the national telephone system, even when used only for local calls, the internet, and e-mail systems, even when used only within one state.

The mailing or use of an instrumentality of interstate commerce need not involve a false record or any fraudulent representation. Moreover, it is not necessary for the defendant to be directly or personally involved in the mailing or use of an instrumentality of interstate commerce.

REQUEST NO. 23

Counts Twelve, Thirteen, and Fourteen: Falsifying Records of an  
Investment Adviser

Third Element -- Required Records

With respect to each of Counts Twelve, Thirteen, and Fourteen, respectively, the Government must next show that BLMIS was required by law to maintain the records charged in that Count in its capacity as an Investment Advisor. I have already instructed you that investment advisors who make use of the mails or any instrumentalities of interstate commerce in connection with their business are required to make and keep records as prescribed by the SEC.

If you find that the Government has proven that at the relevant time that BLMIS was an Investment Adviser required to be registered with the SEC, and that it made use of the mails or any instrumentalities of interstate commerce in connection with its business, the records it was required to keep include memoranda of each order given by the investment adviser for the purchase or sale of any security, and trial balances, financial statements and internal audit working papers relating to the business of the investment adviser.

If you further find that the Government has proven that BLMIS, as an investment adviser, had custody or possession of securities or funds of any client, BLMIS was further required to keep and maintain additional documents including copies of confirmations of all transactions effected by or for the account of a client.

In this case the government claims that the following documents are covered by each count, and as to each defendant respectively [we respectfully ask the government to list the documents by count, and by defendant].

Counts Twelve, Thirteen, and Fourteen: Falsifying Records of an Investment Adviser

Fourth Element - Falsifying Records of an Investment Adviser

The Government next must prove, with respect to each of Counts Twelve, Thirteen and Fourteen, that the defendant you are considering knowingly and willfully caused BLMIS to make materially false or misleading statements in the documents required to be kept by an Investment Adviser.

I have defined the terms and "knowingly" and "willfully". Those same definitions apply here. I have also defined for you the terms "false or misleading" and "materially". Those same definitions apply here.

To establish this element, the Government need not prove that the individual defendant in question physically made or those records required by law. It is sufficient if the Government has proved the individual defendant in question knowingly and willfully caused a materially false or misleading statement to be made in a record required to be made and kept by some person, in connection with the activities of an investment adviser.

Now, in each of Counts Twelve, Thirteen and Fourteen, the Government has alleged that different documents required to be kept were false or fraudulent. The Government contends that each of these documents contains one or more materially false statements and/or misleading omissions. The Government is not required to prove that all of these statements and omissions were, in fact, false and misleading. However, in order to convict the individual defendant you are considering, each juror must agree with each of the other jurors that the same statement in the same document that you are considering was in fact materially false or misleading, and also satisfies the other elements of this charge. You may not convict the individual defendant you are considering unless you find unanimously that the government has proven beyond a reasonable doubt that at least one particular statement was materially false and misleading, and satisfies the other elements of this charge. If you unanimously agree that the Government has met its burden of proof as to any of the defendants, the verdict form will ask you to identify what document or documents you have unanimously

agreed satisfied the elements of these counts, as to each defendant.

REQUEST NO. 24B

Counts Twelve, Thirteen, and Fourteen: Falsifying Records of an  
Investment Adviser

Fifth Element - Statute of Limitations

The final element is that there is a limit on how much time the government has to obtain an indictment. This is called the statute of limitations. The statute of limitations for the offenses charged in Counts Twelve, Thirteen and Fourteen is five years. This means that for you to return a guilty verdict on any of Counts Twelve or Thirteen, the Government must convince you beyond a reasonable doubt that the particular false statement was made on or after November 17, 2005.